

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES D. CHAVEZ,	)	No. C 11-03919 EJD (PR)
	)	
Petitioner,	)	ORDER TO SHOW CAUSE
	)	
v.	)	
	)	
WARDEN,	)	
	)	
Respondent.	)	
_____	)	

Petitioner, a state prisoner, seeks a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging a prison disciplinary decision that resulted in the loss of good time credits.<sup>1</sup> Petitioner has paid the filing fee.

### BACKGROUND

Petitioner is currently incarcerated at Pelican Bay State Prison. Petitioner challenges a prison disciplinary hearing at which he was found guilty of attempted battery on a peace officer. Petitioner was assessed 150 days loss of credits.

Petitioner filed the instant federal habeas petition on August 10, 2011.

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<sup>1</sup> The case was reopened after Petitioner provided proof of payment of the filing fee. (See Docket No. 7.)

## DISCUSSION

### A. Standard of Review

This court may entertain a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a).

It shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” Id. § 2243.

### B. Legal Claims

Petitioner received a rules violation report on November 10, 2006, for the charge of “attempted battery on a peace officer.” At the conclusion of a disciplinary hearing held on November 30, 2006, Petitioner was found guilty of the offense and assessed 150 days forfeiture of credits. Petitioner claims that the decision was not supported by reliable evidence and that he was denied his right to appear at the hearing and present a defense. He seeks to have the report removed from his central file to avoid a potential adverse affect on his parole eligibility. Liberally construed, Petitioner’s claim appears cognizable under § 2254 and merits an answer from Respondent.

## CONCLUSION

For the foregoing reasons and for good cause shown,

1. The Clerk shall serve by certified mail a copy of this order and the petition and all attachments thereto on Respondent and Respondent’s attorney, the Attorney General of the State of California. The Clerk also shall serve a copy of this order on Petitioner.

2. Respondent shall file with the court and serve on petitioner, within **sixty (60) days** of the issuance of this order, an answer conforming in all respects to

1 Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of  
2 habeas corpus should not be issued. Respondent shall file with the answer and serve  
3 on Petitioner a copy of all portions of the state trial record that have been transcribed  
4 previously and that are relevant to a determination of the issues presented by the  
5 petition.

6 If Petitioner wishes to respond to the answer, he shall do so by filing a  
7 traverse with the Court and serving it on Respondent within **thirty (30) days** of his  
8 receipt of the answer.

9 3. Respondent may file a motion to dismiss on procedural grounds in lieu  
10 of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules  
11 Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall  
12 file with the Court and serve on Respondent an opposition or statement of non-  
13 opposition within **thirty (30) days** of receipt of the motion, and Respondent shall  
14 file with the court and serve on Petitioner a reply within **fifteen (15) days** of receipt  
15 of any opposition.

16 4. Petitioner is reminded that all communications with the court must be  
17 served on Respondent by mailing a true copy of the document to Respondent's  
18 counsel. Petitioner must also keep the Court and all parties informed of any change  
19 of address.

20  
21 DATED: 3/22/2012

  
EDWARD J. DAVILA  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

JAMES D. CHAVEZ,

Petitioner,

v.

WARDEN,

Respondent.

Case Number: CV11-03919 EJD

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 3/22/2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

James D. Chavez T-27420  
Pelican Bay State Prison  
P. O. Box 7500  
Crescent City, CA

Dated: 3/22/2012

Richard W. Wieking, Clerk  
/s/ By: Elizabeth Garcia, Deputy Clerk